United Nations A/70/229

General Assembly

Distr.: General
31 July 2015

Original: English

Seventieth session
Items 139 and 148 of the provisional agenda*

Human resources management

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Seconded active-duty military and police personnel

Report of the Secretary-General

Summary

The present report is submitted in response to General Assembly resolution 68/252, in which the Assembly requested the Secretary-General to intensify his engagement with Member States with a view to identifying alternative solutions for addressing the conflicts between national legislation and the United Nations staff regulations and rules regarding the secondment of active-duty military and police personnel.

The report describes developments concerning the issue and proposes a way forward for addressing such conflicts.

* A/70/150.

15-13031 (E) 120815

Please recycle

I. Introduction

1. In his report on the overview of the financing of the United Nations peacekeeping operations budget performance for the period from 1 July 2011 to 30 June 2012 and budget for the period from 1 July 2013 to 30 June 2014 (A/67/723), the Secretary-General brought to the attention of the General Assembly the conflict between the Staff Regulations and Staff Rules of the United Nations and the national legislation of some Member States with respect to their active-duty military and police personnel seconded to the Secretariat. In its resolution 67/287, the Assembly noted the difficulties related to the secondment of active-duty military and police personnel against posts, and requested the Secretary-General to report to the Assembly during the main part of its sixty-eighth session on proposals for its consideration, and, as an exceptional measure not to be extended beyond 31 December 2013, to facilitate the full participation of all Member States in seconding active-duty officers.

2. The Secretary-General, in his report on seconded active-duty military and police personnel (A/68/495), described the difficulties encountered in the secondment of military and police personnel recruited against posts in the Secretariat and proposed amendments to certain staff regulations and rules (staff regulation 1.1 (b) — written declaration; staff regulation 1.2 (j) and staff rule 1.2 (l) — honours, gifts or remuneration; and staff rule 4.15 (h) — functions of the central review bodies) in an effort to address potential conflicts between national legislation and the Staff Regulations and Rules.

3. Following its consideration of the report, the General Assembly, in its resolution 68/252, requested the Secretary-General to extend for a further three years the exceptional measures authorized in paragraph 21 of its resolution 67/287 and to intensify his engagement with Member States with a view to identifying alternative solutions for addressing the conflicts between national legislation and the United Nations staff regulations and rules regarding the secondment of active-duty military and police personnel. The Assembly also requested the Secretary-General to submit to it for consideration at the main part of its seventieth session a report regarding developments on the issue and, if necessary, a new proposal.

4. The present report describes the efforts made to identify potential conflicts between national legislation and the Staff Regulations and Rules and the exceptional measures implemented by the Secretariat, as approved by the General Assembly in its resolution 67/287.

II. Conflict or potential conflict with national legislation

5. Seconded active-duty military and police officers make up a unique category of staff serving in the United Nations, as they are in active service with both their Governments and the United Nations. As such, they are subject to the regulations and rules that govern their service with both entities. In some instances, national legislation prohibits active-duty military or police personnel from accepting remuneration from an outside organization. In others, the payment of certain benefits to personnel is required for them to remain in active status. Such situations conflict with United Nations staff regulation 1.2 (j), which prohibits staff from accepting any honour, decoration, favour, gift or remuneration from any Government.

6. To better understand such conflicts, and in compliance with General Assembly resolutions 67/287 and 68/252, the Secretariat circulated to all Member States a note verbale, dated 20 June 2014, requesting Member States to provide information on any potential conflicts between their national legislation and the Staff Regulations and Rules that might have an impact on the contractual obligations of active-duty military and police officers holding a United Nations staff appointment. Given the complexity of the matter, the deadline of 15 August 2014 was extended to 15 September 2014, and a reminder was sent on 1 September 2014. As at 1 June 2015,[1] the Secretariat had received 20 responses from Member States, which represents an 11 per cent response rate. Of the 20 responses received, 12 reported conflicts or potential conflicts between their national legislation and the Staff Regulations and Rules. In those instances, the national legislation either provided for additional salary payments, prohibited the receipt of remuneration or benefits from the United Nations or provided for the payment of pension contributions. Four other Member States reported that the United Nations compensation package, compared with their nationally legislated compensation package, was not as appealing and hence could not attract military and police officers to apply for active-duty posts in the Secretariat. As an incentive for service with the United Nations, a number of Member States advised that they were exploring the feasibility of implementing an exceptional measure that would permit their active-duty military and police personnel, if seconded to the United Nations, to accept remuneration from the Government to facilitate their participation in the secondment of active-duty officers. Four other Member States reported no conflict between national legislation and the Staff Regulations and Rules.

7. The low response rate from Member States has made it difficult for the Secretariat to draw conclusions regarding national legislation and remuneration and benefits provided to active-duty seconded officers serving at Headquarters and in peacekeeping operations.

8. As part of the internal review process, and as noted in the note verbale addressed to Member States in June 2014, in accordance with the administrative instructions on reporting, retaining and disposing of honours, decorations, favours, gifts or remuneration from governmental and non-governmental sources (ST/AI/2010/1), all 128 active-duty seconded officers serving at Headquarters in October 2014 were requested to complete a survey reporting any payments, benefits and/or allowances that they might be receiving from their national Governments as a result of their active-duty status. A total of 111 responses was received, covering 53 Member States. Of the seconded officers who responded, 19 staff members from nine Member States reported receiving some form of remuneration from their national Governments, consisting of a small basic salary, allowances and/or pension contributions. Those nine Member States had not responded to the notes verbales circulated by the Secretariat in June and September 2014 or to follow-up communications seeking clarification as to whether the payments made to their seconded active-duty officers were required by national legislation. Despite the survey and further follow-up, the full extent to which active-duty seconded officers

[1] Initial results of the survey, as at 1 January 2015, were shared with Member States in the report of the Secretary-General on the overview of the financing of the United Nations peacekeeping operations: budget performance for the period from 1 July 2013 to 30 June 2014 and budget for the period from 1 July 2015 to 30 June 2016 (A/69/751/Rev.1). The present report contains updated data.

are receiving remuneration and benefits from their respective Member States is not clear.

9. In reviewing the information provided by Member States on conflicts or potential conflicts between national legislation and the Staff Regulations and Rules, as well as the results of the survey of seconded active-duty military and police personnel, it was noted that a number of Governments continued to make contributions to the seconded officer's pension scheme. Under the tripartite secondment agreement, the parties agree to the secondment on the condition that the Government protect all pension and promotion rights of the staff member, who would retain the right to return to service to the Government after the expiration of the appointment on secondment. Since the protection of pension rights is provided for in section II of General Assembly resolution 45/239, the payment of pension contributions to a national pension scheme on behalf of a seconded active-duty military or police officer during his or her service with the Organization is not considered to be in conflict with the Staff Regulations and Rules and may continue.

III. Exceptional measures implemented by the Secretariat

10. To date, the Secretariat has implemented the following exceptional measures on two occasions, according to the terms set out in General Assembly resolution 67/287:

(a) *Active-duty seconded officer on temporary appointment*. Pursuant to paragraph 31 of General Assembly resolution 68/252, an active-duty military officer was appointed on secondment from a Member State on temporary appointment. Under that measure, the United Nations salary was paid to the Government, while the staff member continued to receive a salary from his Government, and the content of the declaration under staff regulation 1.1 (b) was modified to address any potential conflict;

(b) *Active-duty seconded officer on fixed-term appointment*. The recruitment of an active-duty officer under a fixed-term appointment followed a similar arrangement. The salary, post adjustment and allowances were paid to a Government account specified by the staff member and the official travel expenses, including the assignment grant, were paid directly to the staff member's personal account.

11. Currently, the Secretariat is reviewing, in cooperation with the affected staff members and the concerned Member States, three additional cases that may warrant the implementation of exceptional measures.

IV. Guiding principles for resolving the conflict between national legislation and the Staff Regulations and Rules

12. In reflecting on the information from Member States presented in document A/68/495, the Secretariat again considered that any viable option to address the identified conflicts with national legislation and challenges must:

(a) Enable all Member States to participate;

(b) Ensure that the same contractual modality applies to all seconded active-duty military and police personnel;

(c) Provide the necessary accountabilities to enable seconded active-duty military and police personnel to carry out the full functions of their position, including staff supervision and/or the commitment of funds and/or resources;

(d) Ensure that seconded active-duty military and police personnel remain subject to the disciplinary authority of the Secretary-General;

(e) Not create a separate category of staff to whom different values and rules apply;

(f) Address the conflict between the provisions of the Staff Regulations and Rules and the national legislation of certain Member States.

V. Next steps

13. While the exceptional measures approved by the General Assembly in its resolutions 67/287 and 68/252 enabled the Secretariat to address some of the immediate and specific challenges posed by the national legislation of certain Member States, the efforts of the Secretariat to capture fully the breadth and depth of those challenges have not been as fruitful as expected. Thus, in presenting the initial recommendations to resolve the identified conflict (see annex), the Secretariat recognizes that further effort and time is required.

14. The Secretary-General intends to report back annually to the General Assembly in the context of his report on the overview of the financing of the United Nations peacekeeping operations on further steps taken to obtain the required information on and apply the exceptional measures approved by Assembly in its resolutions 67/287 and 68/252.

15. The Secretary-General intends to request seconded active-duty officers to disclose any remuneration or benefits received from their Governments. If an officer discloses the receipt of remuneration or benefits, the Secretariat will work with the relevant Member State to ascertain whether the remuneration or benefits are required by national legislation. The General Assembly may wish to emphasize the importance of all Member States cooperating with the Secretariat in gathering the full breadth and scope of information required regarding any conflict between national legislation and the Staff Regulations and Rules in the secondment of active-duty military and police personnel.

16. Because the information received from Member States was not sufficient, it has not been possible to develop a new proposal for addressing conflicts. The Secretary-General thus requests the General Assembly to consider an extension of the application of the exceptional measures authorized in its resolutions 67/287 and 68/252 to facilitate the submission of the required information and, in the interim, to enable the full participation of all Member States in seconding active-duty officers.

VI. Action to be taken by the General Assembly

17. **The General Assembly is requested to:**

(a) Take note of the additional information provided in the present report on the application of the exceptional measures authorized by the General Assembly in its resolution 67/287;

(b) Consider an extension of the application of the exceptional measures authorized by the General Assembly in its resolutions 67/287 and 68/252 in cases in which national legislation prohibits seconded active-duty military or police personnel from accepting remuneration and benefits from the United Nations or in which national legislation requires that the officer continue to receive certain benefits from the Government;

(c) Request all Member States to cooperate fully with requests for information by the Secretariat on any potential conflicts between their national legislation and the Staff Regulations and Rules as well as on remuneration and benefits provided to active-duty seconded officers.

Annex

Initial recommendations for amending the Staff Regulations and Rules to resolve conflicts relating to secondment

Amendment of staff regulation 1.1 (b) — written declaration

1. In order to address the potential conflict involving dual loyalty to both the national Government and the United Nations, the Secretary-General recommends that a written declaration be signed by all seconded active-duty military and police personnel under staff regulation 1.1 (b) and that an additional undertaking be included in order for such personnel to inform the United Nations of any conflict between the declaration and the oath or affirmation of office made with their national authorities. In this respect, the Secretary-General suggests that the additional declaration for seconded active-duty military and police personnel be set out in an amended staff regulation 1.1 (b) as follows (suggested changes in bold text):

> (b) Staff members shall make the following written declaration witnessed by the Secretary-General or his or her authorized representative:
>
> "I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization.
>
> "I also solemnly declare and promise to respect the obligations incumbent upon me as set out in the Staff Regulations and Rules."

Military and police personnel on secondment from government service, who are appointed to posts specifically approved for active-duty military and police personnel, shall make an additional written declaration as follows:

> **"In the event of any conflict between the declaration made by me under the present staff regulation and the oath or affirmation of office made by me as a member of my Government, I shall immediately inform the United Nations and offer to resign forthwith in order to fulfil my obligations under that oath or affirmation."**

2. Where a conflict does arise between the written declaration with the United Nations and an oath or affirmation made by a seconded officer to his or her Government, and the seconded officer does not offer to submit his or her resignation, disciplinary proceedings would be initiated and the seconded officer would be separated.

Amendment of staff regulation 1.2 (j) and related staff rule 1.2 (l) — honours, gifts or remuneration

3. If there is no conflict between national legislation and the United Nations Staff Regulations and Rules, but the United Nations compensation is lower than the

national compensation, the implementation of the exceptional measure would require that, for military and police personnel on secondment from government service, staff regulation 1.2 (j) and related staff rule 1.2 (l) be amended, as follows:

Staff regulation 1.2

(j) No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government. **Military and police personnel on secondment from government service who are appointed to posts specifically approved for active-duty military and police personnel, may be permitted to accept remuneration from their Governments on terms and conditions specified by the Secretary-General in their letters of appointment.**[a]

Staff rule 1.2

(l) No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government, **except as permitted by staff regulation 1.2 (j)**.

Amendment of staff rule 4.15 — functions of the central review bodies

4. As the nomination and selection process for seconded active-duty military and police personnel does not involve review by central review bodies, the Secretary-General suggests that staff rule 4.15 (h) on the functions of the central review bodies be amended, as follows, in order to clarify that the bodies do not advise on the appointment of active-duty military and police personnel.

(h) The central review bodies shall advise the Secretary-General on all appointments of one year or longer, except in the following cases:

(i) Appointment of candidates having successfully passed a competitive examination, in accordance with staff rule 4.16;

(ii) Appointment at the entry level or promotion within the General Service and related categories of candidates having successfully passed an entrance test or examination, under conditions defined by the Secretary-General;

(iii) **Appointment of military and police personnel on secondment from government service to posts specifically approved for active-duty military and police personnel.**

5. Where national legislation prohibits seconded active-duty military or police personnel from accepting remuneration and benefits from the United Nations, or where national legislation requires that the seconded active-duty officers continue to receive certain benefits from their Governments, the Secretary-General considers it most desirable for Member States to consider amending their national legislation in

[a] For classification purposes in the present report: this amendment applies exclusively to military and police personnel on secondment from government service and does not apply to any other group of staff.

order to respect the exclusively international character and responsibilities of United Nations staff. Should this not be feasible or take considerable time to achieve, the Secretary-General requests approval of the General Assembly to continue to apply the exceptional measures authorized in its resolutions 67/287 and 68/252 to enable the full participation of all Member States in seconding active-duty officers to the United Nations.

6. During the onboarding process, seconded active-duty military and police personnel would be required to disclose whether their national legislation either prohibits them from receiving remuneration from the Organization or requires them to continue to accept certain remuneration while in active service on secondment with the Organization. A determination would then be made as to whether to allow a seconded officer to receive remuneration from his or her national Government. If the determination were allowed, under amended staff regulation 1.2 (j) and staff rule 1.2 (l), it would be reflected in the letter of appointment. Where national legislation prohibits the seconded officer from receiving remuneration from the Organization, the officer would be permitted to continue to be remunerated by his or her Government, and the United Nations salary would be remitted to the Government. Where national legislation does not prohibit seconded officers from accepting remuneration from the Organization but requires them to accept certain remuneration from their Governments, the officers would be required to disclose the remuneration and/or benefits payable by their national Governments and explain the national legislation requiring that such payments be made. In such cases, the United Nations would pay the seconded officers in accordance with the Staff Regulations and Rules and would make appropriate adjustments to their United Nations remuneration in order to provide equity of treatment of officers. Irrespective of such arrangements, all seconded officers would continue to be prohibited from accepting any honour, decoration, favour or gift from any Government. If, by virtue of his or her active-duty status with a Government, a seconded officer has cause to be influenced in his or her actions, in particular any action that might reflect on his or her position as an international official responsible only to the Organization, the seconded officer has the obligation to make that fact known to the Organization at the first opportunity (Articles 100 and 101 of the Charter of the United Nations).